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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL D. OATES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 60A04-0611-CR-662
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE OWEN CIRCUIT COURT
The Honorable Frank M. Nardi, Judge
Cause No. 60C01-0409-FC-424

April 19, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Michael D. Oates was convicted of child molesting[1] as a Class C felony after a bench trial. He appeals raising one issue, which we restate as whether sufficient evidence was presented to support his conviction because the testimony of the victim was incredibly dubious.

We affirm.

FACTS AND PROCEDURAL HISTORY

Ten-year-old V.S. lived with her grandparents and father in rural Owen County. On April 17, 2004, V.S.'s grandparents hosted a gathering at their home, which was attended by Oates and several other people. Oates was a family friend and had spent the entire weekend at the home. That night, V.S. fell asleep on a couch in the living room. Oates went to bed after V.S., and slept on an air mattress located on the floor directly next to and beneath the couch where V.S. was sleeping. Marshall Walker, the son of a friend of V.S.'s father, slept on the floor of an adjacent room and from this vantage point could partially see into the living room.

Sometime in the night, V.S. was awakened by Oates rubbing her exposed breasts. *Tr*. at 13-14. She attempted to fall asleep again, but was reawakened when Oates began rubbing her legs and "private parts," which V.S. identified as her vagina. *Id*. at 13, 14. Oates also put his mouth on V.S.'s neck, face, stomach, and breasts. *Id*. at 14. He placed V.S.'s hand on his penis and made her rub it. *Id*. at 15-16. V.S. told Oates that she wanted him to stop, but he did not. *Id*. at 17. Oates finally stopped when V.S.'s grandfather awoke and started moving around the house.

[1] *See* IC 35-42-4-3(b).

The next morning, V.S. told her grandmother what had happened, and her grandmother eventually contacted the police. Oates was interviewed by the Indiana State Police on May 6, 2004. During the interview, Oates admitted that it was probable that V.S.'s version of events had occurred. *State's Ex*. 4 at 30-31. On September 16, 2004, the State charged Oates with child molesting as a Class C felony.

A bench trial was held on April 25, 2006. At the trial, V.S. testified regarding her version of what Oates had done. V.S. testified that Oates had been the one who woke her by rubbing her breasts and woke her again by rubbing her legs and vagina. *Tr*. at 13-14. She stated that Oates had kneeled over her, facing her as he touched her. *Id*. at 25. Walker also testified that, in the middle of the night, he had seen Oates kneeling over V.S. as she slept on the couch. *Id*. at 49. Walker stated that he also heard noises, which were similar to noises made when someone masturbates. *Id*. at 49-50. During the trial, a transcript of Oates's interview with the police was admitted without objection. *Id*. at 67; *State's Ex*. 4. The trial court found Oates guilty of Class C felony child molesting. Oates now appeals.

DISCUSSION AND DECISION

Our standard of review for sufficiency claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Dickenson v. State*, 835 N.E.2d 542, 551 (Ind. Ct. App. 2005), *trans. denied*. We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. *Id*.; *Robinson v. State*, 835 N.E.2d 518, 523 (Ind. Ct. App. 2005). We will affirm the conviction if there is sufficient probative evidence to support the judgment of the trier of fact. *Dickenson*, 835 N.E.2d at 552; *Robinson*, 835 N.E.2d at 523.

Oates argues that insufficient evidence was presented to support his conviction for child molesting because V.S.'s testimony was incredibly dubious. Under the incredible dubiosity rule, a court may "'impinge on the jury's responsibility to judge the credibility of the witness only when confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity.'" *White v. State*, 846 N.E.2d 1026, 1032 (Ind. Ct. App. 2006), *trans. denied* (quoting *Stephenson v. State*, 742 N.E.2d 463, 497 (Ind. 2001), *cert. denied* (2002)). The application of this rule is rare and is limited to cases where the testimony of a sole witness is so incredibly dubious or inherently improbable that it runs counter to human experience, and no reasonable person could believe it. *Herron v. State*, 808 N.E.2d 172, 176 (Ind. Ct. App. 2004), *trans. denied*; *Kien v. State*, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*.

Oates contends that V.S.'s testimony was inherently improbable and, therefore, insufficient to sustain his conviction. He bases his argument on testimony of V.S., where she stated, "[w]hat woke me up is people was rubbing on my breasts and it woke me up because it was weird. And then as I went back to sleep, I was woke back up by them doing it again and rubbing on my legs and on my private parts." *Tr*. at 13. He claims that this statement makes V.S.'s testimony inherently unreliable because it was not consistent with the rest of her testimony. Although V.S. did use plural pronouns in the above testimony, nowhere else in her testimony did she state that anyone other than Oates had touched her. She consistently testified that Oates was the one who touched her, and this one use of plural pronouns did not make her testimony inherently improbable.

Oates also maintains that there were other omissions and contradictions in V.S.'s

testimony that make it inherently improbable. First, he contends that Walker testified to hearing noises that sounded like masturbation, but that V.S. never testified that Oates was masturbating. Although V.S. did not testify that Oates was masturbating, Walker's testimony was consistent with V.S.'s statement that Oates placed her hand on his penis and forced her to rub it. Second, Oates claims that V.S. never testified that Oates stood or kneeled near her although Walker stated that Oates was standing over V.S. when he saw him. Walker did initially testify that he saw Oates standing over V.S. on the couch, but then clarified that Oates was actually kneeling over her. *Id*. at 49. V.S. also testified that Oates was kneeling and facing her when he touched her. *Id*. at 25. Therefore, both Walker and V.S. were consistent on this point. Oates has not demonstrated that the incredible dubiosity rule is applicable here. We therefore conclude sufficient evidence was presented to support Oates's conviction for child molesting.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.